

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
McDermott, Valentino & Co., Inc. :  
for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Corporation :  
Franchise Tax under Article 9A & 27 of the Tax Law :  
for the Fiscal Years Ended 10/31/80 & 10/31/81. :  
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AFFIDAVIT OF MAILING

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 4th day of April, 1985, he served the within notice of Decision by certified mail upon McDermott, Valentino & Co., Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

McDermott, Valentino & Co., Inc.  
405 Northfield Avenue  
West Orange, NJ 07052

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
4th day of April, 1985.

David Parchuck

James B. Haglund  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
McDermott, Valentino & Co., Inc. :  
for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Corporation :  
Franchise Tax under Article 9A & 27 of the Tax :  
Law for the Fiscal Years Ended 10/31/80 & 10/31/81. :  
:

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AFFIDAVIT OF MAILING

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 4th day of April, 1985, he served the within notice of Decision by certified mail upon Edward P. Bond, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Edward P. Bond  
Bederson, Parness & Bond  
405 Northfield Ave.  
West Orange, NJ 07052

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this  
4th day of April, 1985.

David Parchuck

James P. Hagglund

Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

April 4, 1985

McDermott, Valentino & Co., Inc.  
405 Northfield Avenue  
West Orange, NJ 07052

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Law Bureau - Litigation Unit  
Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Edward P. Bond  
Bederson, Parness & Bond  
405 Northfield Ave.  
West Orange, NJ 07052  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
McDERMOTT, VALENTINO & CO., INC. : DECISION  
for Redetermination of a Deficiency or for :  
Refund of Franchise Tax on Business Corporations :  
under Articles 9-A and 27 of the Tax Law for :  
the Fiscal Years Ended October 31, 1980 and :  
October 31, 1981. :  

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Petitioner, McDermott, Valentino & Co., Inc., 405 Northfield Avenue, West Orange, New Jersey 07052, filed a petition for redetermination of a deficiency or for refund of franchise tax on business corporations under Articles 9-A and 27 of the Tax Law for the fiscal years ended October 31, 1980 and October 31, 1981 (File No. 40251).

On August 20, 1984 petitioner, by its president, Bernard J. McDermott, Jr., waived a formal hearing and requested the State Tax Commission to render its decision based on the Department of Taxation and Finance file as presently constituted.

ISSUES

I. Whether petitioner is entitled to interest on its fiscal year 1980 refund claim for stock transfer tax paid.

II. Whether petitioner is liable for penalties and interest on its fiscal year 1980 franchise tax liability from the date its report was due until the date its fiscal year 1981 refund was applied against its fiscal year 1980 liability.

FINDINGS OF FACT

1. Petitioner, McDermott, Valentino & Co., Inc., is a corporation organized under the laws of this state and is engaged in business as a broker-dealer in securities.

2. Petitioner timely filed an application for an extension of time to April 15, 1981 within which to file its New York State franchise tax report for the fiscal year ended October 31, 1980 and remitted with its application a payment of \$250.00. Petitioner filed its franchise tax report for fiscal year 1980 on July 20, 1981 and filed simultaneously therewith a Claim for Credit or Refund of Corporation Tax Paid, requesting a credit in the sum of \$17,827.00 for stock transfer tax paid. Petitioner's report thus claimed a refund of \$5,259.00, which was computed as follows:

Tax due		\$12,818
Prepayments		
Payment made with application for extension	250	
Stock transfer tax credit claimed	17,827	
		<u>18,077</u>
Refund requested		\$ 5,259

3. The Audit Division separately reviewed petitioner's franchise tax report and its claim for credit.

(a) The Audit Division recalculated petitioner's net operating loss deduction for fiscal year 1980 and determined that the proper franchise tax due was \$12,602.00, rather than \$12,818.00. By a Statement of Tax Reduction or Overpayment dated April 30, 1982, the Audit Division advised petitioner of this reduction to its tax.

(b) On September 11, 1981, the Audit Division issued to petitioner a Notice and Demand for Payment of Corporation Tax Due, assessing franchise tax, delinquency penalties and interest for fiscal year 1980, scheduled as shown below.

Tax	\$12,818.00
Interest	787.25
Delinquency penalties	2,576.44
Less: prepayment	(250.00)
Amount assessed	<u>\$15,931.69</u>

(c) On or about September 12, 1981, the Audit Division allowed in full petitioner's stock transfer tax refund claim for fiscal year 1980. On or about September 21, 1981, the Comptroller of the State of New York issued to petitioner a refund check; however, petitioner returned the check, indicating that the amount should properly have been applied against its franchise tax due for fiscal year 1980. This check was lost.

4. Petitioner timely submitted its franchise tax report for the fiscal year ended October 31, 1981, and simultaneously filed a claim for credit or refund of stock transfer tax paid, seeking a refund in the amount of \$14,068.00. The Audit Division allowed petitioner's requested refund in full and on or about June 15, 1982, applied it against the assessment for fiscal year 1980.

5. On May 2, 1983, petitioner made a payment of \$12,568.00 (\$12,818.00 less \$250.00) with respect to the assessment for fiscal year 1980.

6. It is the Audit Division's position that petitioner is liable for penalties and interest on its fiscal year 1980 liability from the date the report was due until the date its fiscal year 1981 refund was applied against the fiscal year 1980 liability (June 15, 1982). Petitioner maintains that penalty in the amount of \$1,885.20 should have been assessed for late filing of the fiscal year 1980 report (\$12,568 x 5% x 3 months) and that interest should have been assessed for the period January 15, 1981 (the date the report was due) through June 1, 1981 (the date the refund of stock transfer tax became payable).

CONCLUSIONS OF LAW

A. That a credit against the franchise tax is permitted in an amount equal to "fifty per cent of the tax incurred in market making transactions under the provisions of article twelve of this chapter [tax on transfers of stock and other corporate certificates] on such transactions subject to such tax occurring on and after August first, nineteen hundred seventy-six..." and paid by the taxpayer (Tax Law section 210.14[a]). The amount to be refunded "shall not be paid prior to the first day of the eighth month following the close of the taxable year...", and interest is allowed and paid on the refund "from the first day of the eleventh month following the close of the taxable year, or three months after a claim for the credit or refund...has been filed, whichever is later." (Section 210.14[c].) The statutory language clearly indicates that interest would have begun to accrue on petitioner's fiscal year 1980 refund for stock transfer tax on October 20, 1981, three months after its claim for credit or refund was submitted. Thus, when the Comptroller forwarded to petitioner its refund check on or about September 21, 1981, petitioner was not entitled to any interest on the principal amount of the refund. That petitioner chose to return the check does not alter this result.

B. That a penalty is imposed for a corporation's failure to file its franchise tax report on or before the prescribed date, such date determined by taking into consideration any extension of time granted for filing the report. The amount of the penalty is calculated as follows: "there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate."

(Section 1085[a][1].) In carrying out the calculation, the amount of tax required to be shown on the report is reduced by any portion of the tax paid on or before the date prescribed for payment and by any credit which may be claimed on the report. (Id.) A penalty is also imposed for a corporation's failure to pay the amount shown as tax on a report on or before the prescribed date, such date determined by taking into consideration any extension of time granted for payment. The amount of the penalty is computed as follows: "there shall be added to the amount shown as tax on such return one-half of one percent of the amount of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate." (Section 1085[a][2].) In performing the computation for any month, the amount of tax shown on the return is reduced by any portion of the tax paid on or before the beginning of such month and by the amount of any credit which may be claimed on the report. (Id.) The Audit Division is hereby directed to recompute the delinquency penalties assessed against petitioner, by reducing the base for the computation of the penalties to take cognizance of the following: (1) the correct amount of tax required to be shown on petitioner's fiscal year 1980 report, \$12,602.00 (see Finding of Fact "3[a]"); (2) the payment petitioner remitted with its application for extension, \$250.00 (see Finding of Fact "2"); and (3) the credit for stock transfer tax, which credit became payable to petitioner on July 20, 1981 (the date petitioner submitted its claim).

C. That interest accrued on petitioner's fiscal year 1980 tax liability commencing with the date payment was due, January 15, 1981 (section 1084[a]).



The first thing I noticed when I stepped out of the car was the cold. It was a sharp, biting cold that seemed to penetrate my coat. I shivered as I walked towards the building, my hands tucked into my pockets. The air was thick with a heavy mist, and the ground was slick with rain. I could hear the distant sound of traffic, but it felt like it was coming from another world. The building I was heading to was a large, imposing structure with many windows. Some of the windows were lit up, while others were dark. I felt a sense of anticipation as I approached the entrance.

As I entered the building, I was greeted by a woman with short, curly hair. She was smiling at me, and her voice was warm. She told me that I was in the right place and that I should follow her. I nodded and followed her down a long hallway. The walls were covered in a patterned wallpaper, and the floor was made of polished wood. There were several doors along the hallway, but I didn't know which one to go to. I looked at the woman, and she pointed towards a door at the end of the hallway. I opened the door and stepped inside. The room was large and bright, with a high ceiling and a chandelier. There were several people in the room, and I felt a sense of relief. I had finally found the place I was looking for.

I sat down at a table and looked at the menu. There were many options, and I felt a bit overwhelmed. I looked up at the woman who had greeted me, and she was still smiling. She told me that I could take my time and that she would be back to help me. I nodded and started to read the menu. I saw a lot of interesting dishes, and I felt hungry. I decided to order a few things, and the woman came back to take my order. She was very friendly and helpful, and I felt comfortable with her. I waited for a while, and then the food came. It was delicious, and I ate it all. I felt satisfied and happy. I looked at the woman, and she was still smiling. She told me that I was a good customer and that she would be back to help me again. I nodded and thanked her. I felt a sense of accomplishment and pride. I had finally found the place I was looking for, and I was happy to be there.

I walked out of the building and looked back at it. It was a beautiful building, and I felt a sense of pride. I had found the place I was looking for, and I was happy to be there. I felt a sense of accomplishment and pride. I had finally found the place I was looking for, and I was happy to be there.

The amount of tax on which interest is to be computed must be reduced in accordance with the rationale of Conclusion of Law "B".

D. That the petition of McDermott, Valentino & Co., Inc. is granted to the extent indicated in Conclusions of Law "B" and "C", and the Audit Division is directed to compute and to process the refund due petitioner to be consistent herewith.



DATED: Albany, New York

STATE TAX COMMISSION

APR 04 1985

  
PRESIDENT

  
COMMISSIONER

   
COMMISSIONER